

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

LAWRENCE JOHNSON,
Defendant

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Case 1:01-CR-336-05

TRANSCRIPT OF PROCEEDINGS

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: July 10, 2003

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

WILLIAM A. BEHE, Assistant United States Attorney
For - United States of America

KIRSTIN M. SWEIGARD, Esquire
For - Defendant

**FILED
HARRISBURG**

DEC 22 2003

MARY E. D'ANDREA, CLERK

Per *[Signature]*
DEPUTY CLERK

Vicki L. Fox, RMR
Official Reporter

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1 MR. BEHE: Good afternoon, Your Honor.

2 MR. SWEIGARD: Good afternoon.

3 MR. BEHE: Your Honor, this is the matter of
4 United States of America versus Lawrence Johnson which is at
5 Criminal Docket Number 01-336. Mr. Johnson is present
6 before you with counsel.

7 He is here today to waive indictment and enter a
8 plea of guilty to a superseding information that was filed
9 pursuant to a plea agreement that was entered into with the
10 United States. That superseding information charges in a
11 single count a violation of Title 21 of the United States
12 Code, section 841(a)(1), as well as Title 18 of the United
13 States Code, section 2 referring in that count to a specific
14 date of on April 24th, 2002, the defendant intentionally and
15 knowingly, unlawfully manufactured and possessed with the
16 intent to manufacture and deliver an unspecified amount of
17 cocaine base, also known as crack cocaine, as well as
18 cocaine hydrochloride, both being Schedule II controlled
19 substances, and that he was an accomplice in that conduct.

20 As stated, he is here today to waive indictment
21 and plead guilty to this offense.

22 THE COURT: Mr. Johnson, before I can accept your
23 change of plea, it will be necessary for me to establish for
24 the record that you understand your rights and the
25 consequences of your plea. You will be placed under oath,

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1 and I will ask certain questions of you.

2 You should be advised if you give me any false
3 answers, you can be subject to further prosecution for
4 perjury or false swearing. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you further understand if you went
7 to trial in this matter, you could not be forced to take the
8 witness stand and testify against yourself? However because
9 you are entering a plea of guilty, I must establish for the
10 record your involvement in these charges.

11 I will ask questions to which you must respond
12 thereby giving up your right against self-incrimination.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 (Lawrence Johnson was duly sworn.)

16 BY THE COURT:

17 Q How old are you?

18 A 23.

19 Q How far have you gone in school?

20 A To the twelfth grade.

21 Q You fully read and write English?

22 A Yes.

23 Q Have you taken any drugs or alcohol before coming into
24 court today?

25 A No.

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1 Q Are you undergoing any psychological or psychiatric
2 counseling of any kind?

3 A No.

4 Q Now are you satisfied with the representation you have
5 received from your counsel to date?

6 A Yes.

7 THE COURT: Now you are privately retained; is
8 that right?

9 MS. SWEIGARD: That's correct, Your Honor.

10 BY THE COURT:

11 Q Do you understand that if at any stage of these
12 proceedings you can no longer afford to retain private
13 counsel, that the Court on proper application will consider
14 the appointment of a Public Defender to represent you
15 without cost; do you understand?

16 A Yes.

17 Q Now there is a superseding information that has been
18 filed. Under the law, you are entitled to request the
19 government to present these matters to a Grand Jury. A
20 Grand Jury consists of no less than 16, nor more than 23
21 persons; and at least twelve members of that Grand Jury must
22 be satisfied that the government has sufficient facts to
23 even bring these charges against you.

24 It is my understanding that you wish to waive
25 presentment to a Grand Jury and proceed to plead to a

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1 superseding information; is that correct?

2 A Yes.

3 Q Do you wish to have this information read to you at
4 this time, or do you waive the reading of the information?

5 A I waive it.

6 Q Have you reviewed it with counsel?

7 A Yes.

8 Q You are also entitled to a jury trial in this matter
9 in which you through counsel would select a jury consisting
10 of twelve persons. At a trial, the government would have
11 the responsibility of proving each and every element of the
12 crime charged against you beyond a reasonable doubt.

13 You are presumed innocent until that burden is
14 met. At a trial, you would have the right through counsel
15 to cross-examine any witnesses the government would present.
16 You, in turn, would have the right to subpoena witnesses and
17 evidence on your own behalf; although, you are not required
18 to do so.

19 Any finding of guilt by a jury would have to be
20 unanimous. That is all twelve jurors would have to agree.

21 If you give up your right to a jury trial, you
22 give up your right to present any defenses that you may have
23 or the right to appeal any pretrial motions.

24 Do you understand your right to a jury trial?

25 A Yes.

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1 Q Is it your desire to give up your right to a jury
2 trial and plead to the superseding information?

3 A Yes.

4 THE COURT: There is a plea agreement in this
5 matter. I would ask Mr. Behe to state the essence of the
6 plea agreement for the record.

7 MR. BEHE: Yes, Your Honor. The plea agreement
8 calls for Mr. Johnson to waive indictment and plead guilty
9 to this one count superseding information, which as I
10 indicated earlier charges in a single count a violation of
11 Title 21 of the United States Code, section 841(a)(1), as
12 well as Title 18 of the United States Code, section 2. That
13 is they possessed with the intent to manufacture and
14 distribute an unspecified amount of cocaine base, also known
15 as crack cocaine and cocaine hydrochloride.

16 The defendant understands from the plea agreement
17 that he faces up to 20 years in imprisonment and a fine of
18 up to one million dollars, a \$100.00 special assessment and
19 a term of supervised release to be determined by the Court.

20 The plea agreement also provides for the
21 possibility of a two level reduction for acceptance of
22 responsibility if appropriate.

23 The plea agreement had also contained language in
24 it regarding cooperation, and the United States agreeing to
25 consider that cooperation and the possibility of a motion

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1 for a downward departure pursuant to section 5K1.1 of the
2 Guidelines. However, the defendant returned the plea
3 agreement to the United States and removed or redacted from
4 the plea agreement all references to cooperation with the
5 United States. So he has not agreed and has affirmatively
6 indicated he will not cooperate with the United States which
7 relieves the United States, as well, of its obligation to
8 consider any motion for downward departure.

9 The plea agreement does not contain -- but the
10 United States will agree to this -- it does not contain a
11 provision that allows him to enter a conditional plea. If
12 you will remember in this case, there was a pretrial motion
13 to suppress based on a stop at the side of the road.

14 The defendant wishes to pursue the denial of that
15 motion. And I agree to allow or to recommend to the Court
16 that he be allowed to enter a conditional plea to appeal
17 that motion.

18 I believe those are the salient terms of the plea
19 agreement.

20 BY THE COURT:

21 Q I need to correct something because I told him if he
22 waives jury trial, he also waives his right to appeal any
23 pretrial motion. So that is corrected.

24 As I understand it, you will be permitted to
25 appeal the suppression ruling; do you understand that?

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1 A Yes.

2 Q Is that your understanding of the plea agreement as
3 related by Mr. Behe?

4 A Yes.

5 Q Have there been any promises made to you that haven't
6 been set forth in the plea agreement except for the fact
7 that you will be entitled to appeal the pretrial suppression
8 motion? Have there been any other things that have been
9 promised to you that haven't been set forth in the plea
10 agreement?

11 A No.

12 Q Have there been any threats against you or any member
13 of your family to get you to enter into this plea?

14 A No.

15 Q Has anyone promised you what your sentence would be?

16 A No.

17 Q In that regard, do you understand that the maximum
18 penalty for this offense could be imprisonment for a period
19 of twenty years, a fine of one million dollars, or both, a
20 term of supervised release up to five years, costs of
21 prosecution, denial of certain federal benefits and a
22 special assessment of one hundred dollars; do you understand
23 that?

24 A Yes.

25 Q Now this term of supervised release is a term that is

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1 served after any prison term. So if you should violate any
2 of the terms of your supervised release, you could be
3 returned to prison; do you understand?

4 A Yes.

5 Q Do you understand that there are also sentencing
6 guidelines that this Court must follow, and that I cannot
7 depart from those guidelines except under special
8 circumstances?

9 If anyone has estimated to you what your
10 guideline would be, it is not binding on the Court because I
11 won't know what your guideline is until after your
12 presentence report has been completed.

13 So if the guideline that I determine applies to
14 you is different from what anyone else has estimated, you
15 cannot withdraw your guilty plea.

16 Do you understand?

17 A Yes.

18 Q As I understand it, I note that in going through the
19 plea agreement that all the paragraphs that call for
20 cooperation have been scratched out.

21 So do you understand that the government has no
22 obligation to file for a downward departure for you because
23 of your cooperation; do you understand that?

24 A Yes.

25 Q I show you a document entitled Plea Agreement. Have

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1 you reviewed that with your counsel?

2 A Yes.

3 Q Would you take a look at the tab and identify your
4 signature? Is that your signature?

5 A Yes.

6 Q Do you have any questions of the Court concerning
7 anything in that document?

8 A No.

9 Q Okay. Now you are charged with on April 24th, 2002 in
10 Dauphin County with intentionally and knowingly unlawfully
11 manufacturing and possessing with intent to manufacture and
12 distribute crack cocaine -- as well as powder cocaine?

13 MR. BEHE: Yes, Your Honor, both substances.

14 THE COURT: And that you did aid and abet in the
15 same. I would ask Mr. Behe to state what facts he would
16 present in support of this charge.

17 MR. BEHE: Yes, Your Honor. The evidence would
18 show in April of last year, Swatara Township Police pulled
19 over a van in which the defendant and codefendant Mari
20 Anthony were riding. Mr. Anthony at the time was the
21 subject of a federal drug trafficking investigation
22 involving Tyrone Smith, Junior. DEA agents were behind the
23 van at the time it was stopped.

24 The van had been observed outside of Mari
25 Anthony's townhouse in Hershey, and Anthony and the

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1 defendant were observed getting into the van with a black
2 gym bag.

3 As a result of the stop, Police learned that both
4 Mari Anthony and this defendant had outstanding warrants for
5 miscellaneous matters. Mari Anthony was placed in a Police
6 cruiser first while the results of a metro check on the
7 validity of Johnson were pending.

8 When it was confirmed that the warrant was still
9 valid, the defendant was asked to step out of the van and
10 was patted down.

11 During the course of the pat down, the defendant
12 began to struggle with the arresting officers. During the
13 struggle, both powder and crack cocaine that was secreted in
14 the defendant's waistband came spilling out on to the
15 roadway.

16 After Mr. Johnson was subdued, a large amount of
17 crack cocaine and cocaine hydrochloride was recovered from
18 within his waistband, as well as that which was on the side
19 of the road.

20 A search of the van resulted in the recovery of
21 additional recently cooked crack cocaine from within the gym
22 bag, as well as several thousand dollars from a freezer bag.

23 Agents then searched Mari Anthony's town home
24 pursuant to a warrant and recovered an additional quantity
25 of powder cocaine, as well as a cooking pot with crack

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1 cocaine residue in it indicating that the crack seized from
2 the gym bag and on the person of this defendant had just
3 recently been made in Mari Anthony's kitchen.

4 The total amount seized from the roadway from the
5 defendant from the gym bag and from Anthony's townhouse
6 amounted to perhaps a half a kilogram each or a little less
7 for both crack cocaine and powder cocaine.

8 The COURT: A total of a kilo?

9 MR. BEHE: About 800 grams, roughly 400 and some
10 grams apiece.

11 BY THE COURT:

12 Q On April 24th, 2002, did you possess at that time
13 crack cocaine, as well as cocaine powder?

14 A Yes.

15 Q Did you aid and abet Mari Anthony in the possession
16 and production of that material?

17 A Yes.

18 Q Do you have any dispute with the facts as related by
19 Mr. Behe?

20 A The stuff that was in the house?

21 Q First of all, at the time of the arrest, did you have
22 on your person cocaine?

23 A Yes.

24 Q And powder cocaine?

25 A Yes.

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1 Q And the material that was in the vehicle, did you
2 assist Mr. Anthony in the possession of that?

3 A No.

4 Q And the production?

5 A No.

6 THE COURT: Is there going to be a dispute on
7 amounts attributed to him?

8 MR. BEHE: I don't believe so. The defendant
9 recently was given a polygraph examination, and after the
10 polygraph admitted he was at Mr. Anthony's town home while
11 Mr. Anthony was cooking up the powder cocaine into crack
12 cocaine. That is what was in the van and the substance that
13 was then found in the van and on the defendant's person.

14 I don't know that he personally assisted in the
15 cooking of it.

16 THE COURT: He was present. He knew what was
17 going on?

18 MR. BEHE: And he was certainly in possession of
19 that substance that was found on his person in the van. Of
20 course, he can contest at sentencing whatever amount.

21 THE COURT: Whatever amount he claims is
22 attributed to him. That still might be relevant conduct.
23 BY THE COURT:

24 Q You don't contest the fact that in the search of the
25 van in addition to what is found on you, there was found

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1 some additional crack cocaine as well as powder cocaine?

2 A Yes.

3 Q Is it your desire then to enter a plea of guilty to
4 this offense? Do you wish to enter a plea of guilty --

5 A Yes.

6 Q -- to this offense? Do you have any question about
7 the charges?

8 A No.

9 THE COURT: AND NOW this 10th day of July, the
10 year 2003, the Court finds that the defendant has knowingly
11 and intelligently waived presentment by indictment and has
12 agreed to proceed on the superseding information and has
13 waived the reading of the superseding information in open
14 court.

15 The Court further finds that the defendant is
16 acting voluntarily and not as a result of force or threats
17 or promises apart from the plea agreement, that he
18 understands his rights and the consequences of his plea and
19 voluntarily waives his right to trial.

20 The Court is satisfied that the plea has a basis
21 in fact and contains all of the elements of the crime
22 charged. The Court therefore accepts the plea of guilty to
23 the superseding information and directs the entry of
24 judgment of guilty on the plea.

25 Sentence is deferred pending receipt of the Court

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1 of a presentence report.

2 THE CLERK: Court is in recess.

3 (Whereupon, the proceedings were concluded.)

4
5 I hereby certify that the proceedings and
6 evidence are contained fully and accurately in the notes
7 taken by me on the trial of the above cause, and that this
8 copy is a correct transcript of the same.

9
10 Vicki L. Fox, RMR

11 Vicki L. Fox, RMR

12 Official Reporter

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16 does not apply to any reproduction by any means unless under
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